

owner in writing of its election for all the home run wiring inside the MDU building: (i) to remove the wiring and restore the MDU building consistent with state law within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first; (ii) to abandon and not disable the wiring at the end of the 90-day notice period; or (iii) to sell the wiring to the MDU building owner. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider shall notify the MDU owner at the time of this election of the date on which it intends to terminate service. If the incumbent provider elects to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider that has elected to abandon its home run wiring may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the MDU owner declines to purchase the home run wiring, the MDU owner may permit an alternative provider that has been authorized to provide service to the MDU to negotiate to purchase the wiring.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (a)(1), the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. If the parties are unable to agree on a price within that 30-day time period, the incumbent must elect: (i) to abandon without disabling the wiring; (ii) to remove the wiring and restore the MDU consistent with state law; or (iii) to submit the price determination to binding arbitration by an independent expert. If the incumbent provider chooses to abandon or remove its wiring, it must notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment shall become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. If the incumbent elects at this point to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first.

(3) If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring by the end of the 90-day notice period. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures. If the incumbent fails to comply with any of the deadlines established herein, it shall be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period.

(4) The MDU owner shall be permitted to exercise the rights of individual subscribers under this subsection for purposes of the disposition of the cable home wiring under Section 76.802. When an MDU owner notifies an incumbent provider under this section that the incumbent provider's access to the entire building will be terminated and that the MDU owner seeks to use the home run wiring for another service, the incumbent provider shall, in accordance with our current home wiring rules: (1) offer to sell to the MDU owner any home wiring within the individual dwelling units that the incumbent provider owns and intends to remove; and (2) provide the MDU owner with the total per-foot replacement cost of such home wiring. This information must be provided to the MDU owner within 30 days of the initial notice that

the incumbent's access to the building will be terminated. If the MDU owner declines to purchase the cable home wiring, the MDU owner may allow the alternative provider to purchase the home wiring upon service termination under the terms and conditions of Section 76.802. If the MDU owner or the alternative provider elects to purchase the home wiring under these rules, it must so notify the incumbent MVPD provider not later than 30 days before the incumbent's termination of access to the building will become effective. If the MDU owner and the alternative provider fail to elect to purchase the home wiring, the incumbent provider must then remove the cable home wiring, under normal operating conditions, within 30 days of actual service termination, or make no subsequent attempt to remove it or to restrict its use.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(b) *Unit-by-unit disposition of home run wiring:* (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes, the MDU owner may permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit in the MDU. The MDU owner must provide at least 60 days' written notice to the incumbent MVPD of the MDU owner's intention to invoke this procedure. The incumbent MVPD will then have 30 days to provide a single written election to the MDU owner as to whether, for each and every one of its home run wires dedicated to a subscriber who chooses an alternative provider's service, the incumbent MVPD will: (i) remove the wiring and restore the MDU building consistent with state law; (ii) abandon the wiring without disabling it; or (iii) sell the wiring to the MDU owner. If the MDU owner refuses to purchase the home run wiring, the MDU owner may permit the alternative provider to purchase it. If the alternative provider is permitted to purchase the wiring, it will be required to make a similar election within this 30-day period for each home run wire solely dedicated to a subscriber who switches back from the alternative provider to the incumbent MVPD.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (b)(1), the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. During this 30-day negotiation period, the parties may arrange for an up-front lump sum payment in lieu of a unit-by-unit payment. If the parties are unable to agree on a price during this 30-day time period, the incumbent must elect: (i) to abandon without disabling the wiring; (ii) to remove the wiring and restore the MDU consistent with state law; or (iii) to submit the price determination to binding arbitration by an independent expert. If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring within 14 days. If subscribers wish to switch service providers after the expiration of the 60-day notice period but before the expert issues its price determination, the procedures set forth in paragraph (b)(3) shall be followed, subject to the price established by the arbitrator. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures.

(3) When an MVPD that is currently providing service to a subscriber is notified either orally or in writing that that subscriber wishes to terminate service and that another service provider intends to use the existing home run wire to provide service to that particular subscriber, a provider that has elected to remove its home run wiring pursuant to paragraph (b)(1) or (b)(2) will have seven days to remove its

home run wiring and restore the building consistent with state law. If the subscriber has requested service termination more than seven days in the future, the seven-day removal period shall begin on the date of actual service termination (and, in any event, shall end no later than seven days after the requested date of termination). If the provider has elected to abandon or sell the wiring pursuant to paragraph (b)(1) or (b)(2), the abandonment or sale will become effective upon actual service termination or upon the requested date of termination, whichever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent shall inform the party requesting service termination, at the time of such request, of the date on which service will be terminated. The incumbent provider shall make the home run wiring accessible to the alternative provider within twenty-four (24) hours of actual service termination.

(4) If the incumbent provider fails to comply with any of the deadlines established herein, the home run wiring shall be considered abandoned, and the incumbent may not prevent the alternative provider from using the home run wiring immediately to provide service. The alternative provider or the MDU owner may act as the subscriber's agent in providing notice of a subscriber's desire to change services, consistent with state law. If a subscriber's service is terminated without notification that another service provider intends to use the existing home run wiring to provide service to that particular subscriber, the incumbent provider will not be required to carry out its election to sell, remove or abandon the home run wiring; the incumbent provider will be required to carry out its election, however, if and when it receives notice that a subscriber wishes to use the home run wiring to receive an alternative service. Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will apply where a subscriber's service is terminated without notifying the incumbent provider that the subscriber wishes to use the home run wiring to receive an alternative service.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(6) Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will continue to apply to the wiring on the subscriber's side of the cable demarcation point.

(c) The procedures set forth in paragraphs (a) and (b) shall apply unless and until the incumbent provider obtains a court ruling or an injunction within forty-five (45) days following the initial notice enjoining its displacement.

(d) After the effective date of this rule, MVPDs shall include a provision in all service contracts entered into with MDU owners setting forth the disposition of any home run wiring in the MDU upon the termination of the contract.

(e) Incumbents are prohibited from using any ownership interest they may have in property located on or near the home run wiring, such as molding or conduit, to prevent, impede, or in any way interfere with, the ability of an alternative MVPD to use the home run wiring pursuant to this section.

(f) Section 76.804 shall apply to all MVPDs.

9. Section 76.805 is added to read as follows:

Sec. 76.805 Access to molding.

(a) An MVPD shall be permitted to install one or more home run wires within the existing molding of an MDU where the MDU owner finds that there is sufficient space to permit the installation of the additional wiring without interfering with the ability of an existing MVPD to provide service, and gives its affirmative consent to such installation. This paragraph shall not apply where the incumbent provider has an exclusive contractual right to occupy the molding.

(b) If an MDU owner finds that there is insufficient space in existing molding to permit the installation of the new wiring without interfering with the ability of an existing MVPD to provide service, but gives its affirmative consent to the installation of larger molding and additional wiring, the MDU owner (with or without the assistance of the incumbent and/or the alternative provider) shall be permitted to remove the existing molding, return such molding to the incumbent, if appropriate, and install additional wiring and larger molding in order to contain the additional wiring. This paragraph shall not apply where the incumbent provider possesses a contractual right to maintain its molding on the premises without alteration by the MDU owner.

(c) The alternative provider shall be required to pay any and all installation costs associated with the implementation of paragraphs (a) or (b), including the costs of restoring the MDU owner's property to its original condition, and the costs of repairing any damage to the incumbent provider's wiring or other property.

10. Section 76.806 is added to read as follows:

Sec. 76.806 Pre-termination access to cable home wiring.

(a) Prior to termination of service, a customer may: (1) install or provide for the installation of their own cable home wiring; or (2) connect additional home wiring, splitters or other equipment within their premises to the wiring owned by the cable operator, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact.

(b) Cable operators may require that home wiring (including passive splitters, connectors and other equipment used in the installation of home wiring) meets reasonable technical specifications, not to exceed the technical specifications of such equipment installed by the cable operator; provided however, that if electronic or physical harm is caused to the cable system, the cable operator may impose additional technical specifications to eliminate such harm. To the extent a customer's installations or rearrangements of wiring degrade the signal quality of or interfere with other customers' signals, or cause electronic or physical harm to the cable system, the cable operator may discontinue service to that subscriber until the degradation or interference is resolved.

(c) Customers shall not physically cut, substantially alter, improperly terminate or otherwise destroy cable operator-owned home wiring.

## APPENDIX B

## Parties that Filed Comments and Reply Comments

Note: If no abbreviation appears in parentheses following the full name, the full name is used in this Order and Second Further Notice.

## Comments in CS Docket No. 95-184

Adelphia Communications Corp. (Adelphia)  
Ameritech, Inc. (Ameritech)  
AT&T Corp. (AT&T)  
BellSouth Corp. and BellSouth Telecommunications, Inc. (BellSouth)  
Building Industry Consulting Service International (Building Industry Consulting)  
Building Owners and Managers Association International, National Realty Committee, National Multi Housing Council, National Apartment Association, Institute of Real Estate Management and National Association of Home Builders (Building Owners, et al.)  
Cable Telecommunications Association (CATA)  
CAI Wireless  
Charter Communications & Comcast Cable (Charter/Comcast)  
Cincinnati Bell Telephone Company (Cincinnati Bell)  
Circuit City Stores, Inc. (Circuit City)  
Compaq Computer Corp. (Compaq)  
Consumer Electronics Manufacturers Association (CEMA)  
Consumer Project on Technology  
Continental Cablevision, Inc. and Cablevision Systems Corp. (Continental/Cablevision)  
Cox Communications, Inc. (Cox)  
DIRECTV, Inc. (DIRECTV)  
General Instrument Corp. (General Instrument)  
GTE Service Corp., on behalf of its domestic telephone operating companies and GTE Media Ventures, Inc. (GTE)  
Guam Cable TV  
Heartland Wireless  
Independent Cable & Telecommunications Association (ICTA)  
Independent Data Communications Manufacturers Association (Independent Data Comm. Mfrs. Assn.)  
Information Technology Industry Council (Info. Tech. Industry Council)  
Interactive Cable Systems, Inc. and ActiveTel. L.D., Inc. (Interactive Cable/ActiveTel)  
International Council of Shopping Centers (Shopping Centers)  
Liberty Cable Company (Liberty)  
Marcus Cable Company; American Cable Entertainment; Greater Media, Inc.; Cable Television Association of Maryland, Delaware and the District of Columbia; Cable Television Association of Georgia; Minnesota Cable Communications Association; New Jersey Cable Telecommunications Association; Ohio Cable Telecommunications Association; Oregon Cable Television Association; South Carolina Cable Television Association; Tennessee Cable Television Association; and Texas Cable TV Association (Joint Cable Parties)  
Media Access Project and Consumer Federation of America (Media Access/CFA)  
MFS Communications Company, Inc. (MFS)

Motorola, Inc. (Motorola)  
Multimedia Development Corp. (Multimedia Development)  
MultiTechnologies Services, L.P. (MultiTechnologies Services)  
National Association of Realtors (NAR)  
National Cable Television Association (NCTA)  
National Private Telecommunications Association (NPTA)  
New York City, Department of Information Technology and Telecommunications (New York City)  
NYNEX Telephone Companies (NYNEX)  
Optel, Inc. (Optel)  
Pacific Bell and Pacific Telesis Video Services (PacTel)  
People of the State of California and the Public Utilities Commission of the State of California (California PUC)  
Printz, Michael (Mr. Michael Printz)  
R & B Realty Group (R&B Realty)  
Residential Communications, Inc. (RCN)  
Riser Management Systems, L.P. (Riser Mgmt.)  
Siecor Corp. (Siecor)  
State of New Jersey Board of Public Utilities (New Jersey BPU)  
State of New Jersey, Department of the Treasury, Division of the Ratepayer Advocate (New Jersey Ratepayer Advocate)  
Stellarvision  
Tandy Corp. (Tandy)  
Tele-Communications, Inc. (TCI)  
Telecommunications Industry Association/User Premises Equipment Division (TIA)  
Time Warner Cable and Time Warner Communications (Time Warner)  
TKR Cable Company (TKR)  
United States Telephone Association (USTA)  
U S West, Inc. (U S West)  
UTC, the Telecommunications Association (UTC)  
Wireless Cable Association International, Inc. (WCA)

**Informal Comments in CS Docket No. 95-184**

1st Lake Properties, Inc. (1st Lake Properties)  
101 Hudson Leasing Associates (101 Housing)  
Accredited Management Organization (Accredited Mgmt.)  
Adler Management Services, Inc. (Adler Mgmt.)  
Alan-Ben Properties, Inc. (Alan-Ben Properties)  
Albert B. Ashforth, Inc. (Albert B. Ashforth)  
Allen Morris Company (Allen Morris)  
American Apartment Communities (American Apts.)  
American Baptist Homes of the West  
AMLI Residential  
Amurcon Corporation (Amurcon)  
Andrews, Victoria (Ms. Victoria Andrews)  
Anthem Equity Group, Inc.

Apartment Investment and Management Company (AimCo)  
Aransas Princess Condominiums Homeowners Association (Aransas Princess Assn.)  
The Armiger Group  
Ash Tree Apartments (Ash Tree Apts.)  
Asset Management & Consulting Services, Inc. (Asset Mgmt. & Consulting)  
Atlanta Apartment Association (Atlanta Apt. Assn.)  
Avalon Properties  
Avery Construction Company (Avery Construction)  
Bankers Trust Company (Bankers Trust)  
Beacon Centre  
Beacon Properties, L.P. (Beacon Properties)  
Ben-Steele Properties  
BOMA of Chicago (Chicago BOMA)  
Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer & Gladstone (Brach, Eichler, et al.)  
Brandel, Nancy (Ms. Nancy Brandel)  
Brookfield Management Colorado, Inc. (Brookfield Mgmt.)  
Building Owners and Managers Association of Greater Miami, Inc. (Miami BOMA)  
Building Owners and Managers Association of Southern California (So. California BOMA)  
Building Owners and Managers Association of Metropolitan St. Louis (St. Louis BOMA)  
Calders Corner Apartments (Calders Corner Apts.)  
Cambridge Square  
Candlestick Apartments (Candlestick Apts.)  
Center Management Corp. (Center Mgmt.)  
Centrefirst Management Corp. (Centrefirst Mgmt.)  
Charles Dunn Company (Charles Dunn)  
Charles E. Smith Realty Companies (Charles E. Smith Realty)  
Clark Realty Capital, LLC (Clark Realty)  
Clinton International Group, Inc. (Clinton International)  
Codina Real Estate Management, Inc. (Codina Mgmt.)  
Colliers ABR, Inc. (Colliers ABR)  
Colonial American Development Corp. (Colonial American)  
Colonial Manor Apartments (Colonial Manor Apts.)  
Columbus Realty Trust (Columbus Realty)  
Community Associations Institute  
Community Housing Improvement Program, Inc. (CHIP)  
Compass Management and Leasing, Inc. (Compass Mgmt.)  
Corum Real Estate Group (Corum Real Estate)  
Court Street East, Ltd. (Court Street)  
Courtyard Place  
Crossings  
Dayton Power & Light Company (DP&L)  
Dietrich Apartments (Dietrich Apts.)  
Dominion Management, Inc. (Dominion Mgmt.)  
D Squared  
Duke Realty Investments (Duke Realty)  
Eakin & Smith, Inc. (Eakin & Smith)  
81st Street Realty Company (81st Street Realty)

English Village Apartments (English Village Apts.)  
Equitable Real Estate Investment Management, Inc. (Equitable Real Estate)  
Faison  
FDC Management, Inc. (FDC Mgmt.)  
First Capital Corp. (First Capital)  
First Union Management Inc. (First Union Mgmt.)  
Flourney Properties, Inc. (Flourney Properties)  
Four Seasons Apartments (Four Seasons Apts.)  
Galbreath Company (Galbreath)  
Gebhart Management, Inc. (Gebhart Mgmt.)  
Georgia Apartment Association (Georgia Apt. Assn.)  
Glenwood Management Corp. (Glenwood Mgmt.)  
Glick, Gene B. (Mr. Gene Glick)  
Goodman Segar Hogan Hoffer (Goodman Segar)  
Gorsuch Management (Gorsuch Mgmt.)  
Green Oaks Apartments (Green Oaks Apts.)  
Greensview Apartments (Greensview Apts.)  
Hall, M. Wesley, III and Wall, Thomas Patrick, III (Messrs. Wesley Hall and Thomas Wall)  
Hampton Enterprises  
Harbert Properties Corporation (Harbert Properties)  
Harbor Village Apartments (Harbor Village Apts.)  
Harris Group  
Haygood Management Company (Haygood Mgmt.)  
H&M Management Company (H&M Mgmt.)  
Hickory Woods  
Highpoint  
Home Builders Association of Maryland (Maryland Home Builders Assn.)  
Host Apartments (Host Apts.)  
HRO International  
Huntington  
Insignia Management Group (Insignia Mgmt.)  
Institute of Real Estate Management (Institute of Real Estate Mgmt.)  
IPM Real Estate Services, Inc. (IPM Real Estate)  
Jack Resnick & Sons, Inc. (Jack Resnick & Sons)  
Jacobs Development Company (Jacobs Development)  
Jefferson West Apartments (Jefferson West Apts.)  
John Alden Life Insurance Company (John Alden Life)  
John Hancock Mutual Life Insurance Company (John Hancock Life)  
Jon-Mark Properties LLC (Jon-Mark Properties)  
Jupiter Western National  
Keptel, an Antec Company (Keptel)  
Keystone Realty, Inc. (Keystone Realty)  
Kings Point Apartments (Kings Point Apts.)  
Koll Real Estate Services Company (Koll Real Estate)  
Lafayette Place Condominiums  
LaFontenay Apartments (LaFontenay Apts.)  
Lakeside Luxury Living (Lakeside)



Lake Terrace Gardens  
Lane Company  
LaSalle Partners  
L&B Multifamily Advisors, Inc. (L&B Advisors)  
LCOR, Inc. (LCOR)  
Ledic Management Group (Ledic Mgmt.)  
Legow Management Company (Legow Mgmt.)  
Live Oaks Properties  
Lockwood Group  
Lowe Enterprises Colorado, Inc. (Lowe Enterprises)  
Management Services Corporation I (Mgmt. Services I)  
Management Services Corporation II (Mgmt. Services II)  
Mara Enterprises, Inc. (Mara Enterprises)  
MarRay-Ash Plaza, Inc. (MarRay-Ash Plaza)  
MarRay-PCP 1500, Inc. (MarRay-PCP 1500)  
Massachusetts Institute of Technology (MIT)  
Mathews, Click, Bauman, Inc. (Mathews, Click, et al.)  
Matthews-Brown Contractors, Inc. (Matthews-Brown)  
Meadow Run Apartments (Meadow Run Apts.)  
Meca Properties  
MEGA Corporation (MEGA)  
Mendik Company, Inc. (Mendik)  
Mendik Realty Company, Inc. (Mendik Realty)  
Metropolitan Life Insurance Corp., Corporate Property Management (MetLife)  
Mid State Management Corp. (Mid State Mgmt.)  
Mink and Mink, Inc. (Mink & Mink)  
Edward J. Minskoff Equities, Inc.  
Missouri Apartment Association (Missouri Apt. Assn.)  
MPMS, Inc.  
Murray Land Clearing  
National Association of Industrial and Office Properties (NAIOP)  
National Association of Real Estate Investment Trusts (National Assn. of REITs)  
Network Property Services (Network Property)  
New Plan Realty Trust (New Plan Realty)  
NHP Incorporated (NHP)  
Niles Investment Corp. (Niles Investment)  
92nd Realty Co.  
Norman Management Company (Norman Mgmt.)  
Norris & Stevens  
North Village Apartments (North Village Apts.)  
NP Dodge Management Company, Inc. (NP Dodge Mgmt.)  
O'Connor Real Estate Management (O'Connor Real Estate)  
One Brickell Square  
Oxford Hill Apartments (Oxford Hill Apts.)  
Pace Realty Corporation (Pace Realty)  
Pache Management Company, Inc. (Pache Mgmt.)  
Pacific Tower Properties

Paramount Group, Inc. (Paramount)  
Partners Management Company (Partners Mgmt.)  
Patriot American  
Pecan Valley Apartments (Pecan Valley Apts.)  
Picor Commercial Real Estate Services (Picor Real Estate)  
Pleasanton Village Apartments (Pleasanton Village Apts.)  
Preston Square Apartments (Preston Square Apts.)  
Rafanelli, Nahas & Ambrose Real Estate Development (Rafanelli. et al.. Real Estate)  
Real Estate Board of New York, Inc.  
Regent Management, Inc. (Regent Mgmt.)  
Robbins Realty  
Rose's Down Home Cleaning (Rose's Cleaning)  
RTE Group, Inc. (RTE Group)  
Sandor, Gress & Company (Sandor, Gress)  
Santa Fe Apartments (Santa Fe Apts.)  
Schuparra Properties  
Sentinel Real Estate Corporation (Sentinel Real Estate)  
79th Realty Co.  
Signature  
Silverstein Properties  
650 Fifth Avenue Company  
SNK Realty Group (SNK Realty)  
Soniata Realty Inc. (Soniata Realty)  
South Park Apartments (South Park Apts.)  
Southern Engineering Corporation (Southern Engineering)  
Southridge Manor Apartments (Southridge Manor Apts.)  
Spokane Building Owners and Managers Association (Spokane BOMA)  
Springfield Public Storage  
Summit Properties  
SunTrust Bank, Central Florida, N.A. (SunTrust Bank)  
Sylvan Lawrence Company, Inc. (Sylvan Lawrence)  
Tarragon Realty Advisors, Inc. (Tarragon Realty)  
Teligent, L.L.C. (Teligent)  
Terry Johnson & Associates, Inc. (Terry Jonson & Assoc.)  
Thomas Group, Inc. (Thomas Group)  
Thompson Place Apartments (Thompson Place Apts.)  
Timberweld Laminated Structural Wood (Timberweld)  
Time Group  
TishmanSpeyer Properties, Inc. (TishmanSpeyer Properties)  
Tomlinson Black Management, Inc. (Tomlinson Black Mgmt.)  
Town & Country Apartments (Town & Country Apts.)  
Town Homes Management Inc. (Town Homes Mgmt.)  
Trammell Crow Dallas  
Transwestern Property Company (Transwestern Property)  
Trump Managment, Inc. (Trump Mgmt.)  
Tuck Investments and Rental Properties (Tuck Properties)  
Tulsa Properties Management, Inc. (Tulsa Properties)

1221 Brickell  
United Dominion Realty Trust (United Dominion Realty)  
ViewPointe  
Villa del Lago Apartments (Villa del Lago Apts.)  
Villages of Thousand Oaks, Texas (Thousand Oaks)  
Vinings Group  
VRS Realty Services - Florida, Inc. (VRS Realty)  
Wallick Companies  
Washington Place Management (Washington Place Mgmt.)  
Weeks Corporation  
West Group, Inc. (West Group)  
West World Management, Inc. (West World Mgmt.)  
Western National Property Management (Western Nat'l Property Mgmt.)  
Wildwood Management Group (Wildwood Mgmt.)  
WinStar Communications, Inc. (WinStar)  
Woodmont Real Estate Services (Woodmont Real Estate)  
Woodrow Apartments (Woodrow Apts.)  
Yarmouth Group, Inc. (Yarmouth Group)  
Zehman-Wolf Management, Inc. (Zehman-Wolf Mgmt.)

**Reply Comments in CS Docket No. 95-184**

Ameritech, Inc. (Ameritech)  
Armstrong Holdings, Inc. (Armstrong)  
AT&T Corp. (AT&T)  
Bartholdi Cable Company, Inc. (Bartholdi)  
Bell Atlantic Telephone Companies (Bell Atlantic)  
Building Industry Consulting Service International (Building Industry Consulting)  
Building Owners and Managers Association International, National Realty Committee, National Multi  
Housing Council, National Apartment Association, Institute of Real Estate Management and  
National Association of Real Estate Investment Trusts (Building Owners, et al.)  
Cable Telecommunications Association (CATA)  
Chudnow, Law Office of David (Mr. David Chudnow)  
Circuit City Stores, Inc. (Circuit City)  
Consumer Electronics Manufacturers Association (CEMA)  
Continental Cablevision, Inc. and Cablevision Systems Corp. (Continental/Cablevision)  
Cox Communications, Inc. (Cox)  
DIRECTV, Inc. (DIRECTV)  
Echelon Corporation (Echelon)  
General Instrument Corp. (General Instrument)  
GTE Service Corp., on behalf of its domestic telephone operating companies and GTE Media Ventures,  
Inc. (GTE)  
Independent Cable & Telecommunications Association (ICTA)  
Marcus Cable Company; American Cable Entertainment; Greater Media, Inc.; Cable Television  
Association of Maryland, Delaware and the District of Columbia; Cable Television Association of  
Georgia; Minnesota Cable Communications Association; New Jersey Cable Telecommunications

Association; Ohio Cable Telecommunications Association; Oregon Cable Television Association; South Carolina Cable Television Association; Tennessee Cable Television Association; and Texas Cable TV Association (Joint Cable Parties)  
Media Access Project and Consumer Federation of America (Media Access/CFA)  
MCI Telecommunications Corporation and MCImetro (MCI)  
MFS Communications Company, Inc. (MFS)  
Multimedia Development Corp. (Multimedia Development)  
National Cable Television Association, Inc. (NCTA)  
National Private Telecommunications Association (NPTA)  
National Telephone Cooperative Association (NTCA)  
Optel, Inc. (Optel)  
Pacific Bell and Pacific Telesis Video Services (PacTel)  
Residential Communications, Inc. (RCN)  
Riser Management Systems (Riser Mgmt.)  
RTE Group, Inc. (RTE Group)  
SBC Communications, Inc. (SBC)  
Scientific-Atlanta, Inc. (Scientific-Atlanta)  
Siecor Corp. (Siecor)  
Southern New England Telecommunications Corp. (SNET)  
State of Florida Public Service Commission (Florida PSC)  
State of New York Department of Public Service (New York DPS)  
State of Texas Office of Administrative Hearings (Texas OAH)  
Tandy Corp. (Tandy)  
Telecommunications Industry Association/User Premises Equipment Division (TIA)  
TKR Cable Company (TKR)  
Time Warner Cable and Time Warner Communications (Time Warner)  
United States Telephone Association (USTA)  
Wireless Cable Association International, Inc. (WCA)  
Wireless Holdings, Inc. (Wireless Holdings)

**Comments in MM Docket No. 92-260**

Ameritech New Media, Inc. (Ameritech)  
Bell Atlantic  
Building Owners and Managers Association International, National Realty Committee, National Multi Housing Council, National Apartment Association, Institute of Real Estate Management, and National Association of Home Builders (Building Owners, et al.)  
Cable Telecommunications Association (CATA)  
Charter Communications, Inc., and Comcast Cable Communications, Inc. (Charter/Comcast)  
Consumer Electronics Manufacturers Association (CEMA)  
Cox Communications, Inc. (Cox)  
GTE Service Corporation (GTE)  
Guam Cable TV  
Independent Cable and Telecommunications Association (ICTA)  
Interactive Cable Systems, Inc., and ActiveTel, L.D., Inc. (Interactive/ActiveTel)  
Liberty Cable Company, Inc. (Liberty)

MultiTechnologies Services, L.P. (MultiTechnologies)  
National Cable Television Association (NCTA)  
New Jersey Office of the Ratepayer Advocate (New Jersey Ratepayer Advocate)  
New York City Department of Information Technology and Telecommunications (New York City)  
NYNEX Telephone Companies (NYNEX)  
OpTel, Inc. (OpTel)  
Pacific Bell and Pacific Telesis (PacTel)  
R&B Realty Group, d/b/a R&B Cable Company (R&B Realty)  
Residential Communications Network, Inc. (RCN)  
Stellarvision  
Tele-Communications, Inc. (TCI)  
Time Warner Cable (Time Warner)  
United States Telephone Association (USTA)  
Wireless Cable Association International, Inc. (WCA)

**Reply Comments in MM Docket No. 92-260**

Ameritech New Media, Inc. (Ameritech)  
Armstrong Holdings, Inc. (Armstrong)  
Bartholdi Cable Company, Inc. (Bartholdi)  
Cable Telecommunications Association (CATA)  
Cox Communications, Inc. (Cox)  
Marcus Cable Co., American Cable Entertainment, Greater Media, Inc., TCA Cable TV, Inc., Cable Television Association of Maryland, Delaware and the District of Columbia, Cable Television Association of Georgia, Minnesota Cable Communications Association, New Jersey Cable Telecommunications Association, Ohio Cable Telecommunications Association, Oregon Cable Telecommunications Association, South Carolina Cable Television Association, Tennessee Cable Television Association, and Texas Cable Telecommunications Association (Marcus Cable, et al.)  
MultiMedia Development Corp. (MultiMedia Development)  
National Cable Television Association, Inc. (NCTA)  
New York State Department of Public Service (New York DPS)  
OpTel, Inc. (OpTel)  
Pacific Bell and Pacific Telesis (PacTel)  
Southern New England Telecommunications Corporation (SNET)  
Time Warner Cable (Time Warner)  
Wireless Cable Association International, Inc. (WCA)

**Comments on Initial Regulatory Flexibility Analysis**

Building Owners and Managers Association International, National Realty Committee, National Multi Housing Council, National Apartment Association, Institute of Real Estate Management, and National Association of Home Builders (Building Owners, et al.)  
Cable Telecommunications Association (CATA)

RTE Group, Inc. (RTE Group)

### Further Comments

Adelphia Cable Communications, Arizona Cable Telecommunications Association, Cable One, Inc., Insight Communications Company, L.P., Pennsylvania Cable and Telecommunications Association, State Cable TV Corporation, Suburban Cable TV Co. Inc. (Adelphia, et al.)

Ameritech

Building Owners and Managers Association International, Institute of Real Estate Management, International Council of Shopping Centers, National Apartment Association, National Multi Housing Council and National Realty Committee (Building Owners, et al.)

CableVision Communications, Inc., Classic Cable Inc, and Comcast Cable Communications (Comcast, et al.)

Cablevision Systems Corporation (Cablevision Systems)

Cable Telecommunications Association (CATA)

Community Associations Institute

Consumer Electronics Manufacturers Association (CEMA)

DIRECTV, Inc. (DIRECTV)

Echostar Communications Corporation (Echostar)

GTE

Heartland Wireless Communications, Inc. (Heartland)

Independent Cable and Telecommunications Association (ICTA)

Jones Intercable, Marcus Cable, Century Communications Corp., Charter Communications, Inc., Cable Television Asso. of Georgia, Cable Telecommunications Asso. of Maryland, Delaware and the District of Columbia, Florida Cable Telecommunications Association, New Jersey Cable Telecommunications Association, Ohio Cable Telecommunications Association, Oregon Cable Telecommunications Association, South Carolina Cable Television Association, Tennessee Cable Telecommunications Association, Texas Cable & Telecommunications Association, Virginia Cable Telecommunications Association (Jones Intercable, et al.)

Leaco Rural Telephone Cooperative, Inc. (Leaco)

Media Access Project and Consumer Federal of America (Media Access/CFA)

National Association of Broadcasters (NAB)

National Association of Realtors (Nat'l Assn. of Realtors)

National Cable Television Association, Inc. (NCTA)

OpTel, Inc. (OpTel)

Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc. (Philips, et al.)

RCN Telecom Services (RCN)

SBC Communications, Inc. (SBC)

Skyzone Media Access (Skyzone)

State of New York Department of Public Service (New York DPS)

Tele-Communications, Inc. (TCI)

Time Warner Cable (Time Warner)

U S West, Inc. (U S West)

Wireless Cable Association International, Inc. (WCA)

**Further Reply Comments**

Bell Atlantic

Building Owners and Managers Association International, Institute of Real Estate Management, International Council of Shopping Centers, National Apartment Association, National Multi Housing Council and National Realty Committee (Building Owners, et al.)

CableVision Communications, Inc., Classic Cable, Inc., and Comcast Cable Communications (Comcast, et al.)

Community Associations Institute

Consumer Electronics Manufacturers Association (CEMA)

Cox Communications, Inc. (Cox)

DIRECTV, Inc. (DIRECTV)

Independent Cable & Telecommunications Association (ICTA)

Information Technology Industry Council (Info. Tech. Industry Council)

Jones Intercable, Marcus Cable, Century Communications Corp., Charter Communications, Inc., New Jersey Cable Telecommunications Association, Oregon Cable Telecommunications Association, South Carolina Cable Television Association, Tennessee Cable Telecommunications Association, Texas Cable & Telecommunications Association, Virginia Cable Telecommunications Association (Jones Intercable, et al.)

National Cable Television Association, Inc. (NCTA)

National Rural Telecommunications Cooperative (Nat'l Rural Telecom. Coop.)

North Carolina Cable Telecommunications Association (North Carolina Cable Assn.)

Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc. (Philips, et al.)

Telebeam, Inc. (Telebeam)

Tele-Communications, Inc. (TCI)

Time Warner Cable (Time Warner)

United States Satellite Broadcasting Company, Inc. (USSB)

United States Wireless Systems, Inc., and Ohio Valley Wireless, Inc. (U.S. Wireless/Ohio Valley Wireless)

MDUs not through easements or eminent domain proceedings but by tacit or express agreements with the property owner.<sup>508</sup>

184. Alternative video service providers raise concerns over the disparity in access rights to private property that exists between new entrants and franchised cable operators or incumbent LECs. Specifically, these commenters contend that the most serious barrier to competition in the multichannel video programming service market is the unfair advantage that franchised cable operators have as a result of state mandatory cable access laws.<sup>509</sup> They argue that state mandatory access laws guarantee access only to franchised cable operators and therefore unfairly advantage the franchised cable operator.<sup>510</sup> They also allege that mandatory access laws reduce competition in the MVPD market, and, if such laws are not eliminated, a competitive marketplace for multichannel video programming services will be virtually impossible to promote.<sup>511</sup> OpTel argues that because current state access laws overwhelmingly favor franchised cable operators, they slow the growth of competition.<sup>512</sup> OpTel explains that, where franchised cable operators have a legal right of access under state law, property owners are reluctant to provide alternative providers with access, because the owner knows that the franchised cable operator will likely demand access and overbuild the property, causing great disruption.<sup>513</sup>

185. Several commenters request that the Commission preempt state mandatory access laws.<sup>514</sup> Commenters assert that such preemption would be consistent with prior Commission actions, including the Commission's preemption of laws that effectively hinder the use of satellite television receive-only

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<sup>508</sup>NYNEX Comments at 12-13.

<sup>509</sup>See, e.g., ICTA Comments at 42, 48, 59 (where there is no mandatory access, all providers must compete at the property line for the right to serve by obtaining the property owner's permission for access); Wireless Holdings Reply Comments at 1, 2 (mandatory access laws limit the ability of owners to enter into exclusive arrangements, and it is cost-prohibitive for new entrants to install facilities in MDUs without exclusivity).

<sup>510</sup>See, e.g., Liberty Cable Comments at 13-14; MDC Comments at 3; WCA Comments at 7-8; Wireless Holdings Reply Comments at 2.

<sup>511</sup>See, e.g., MDC Comments at 7; OpTel Reply Comments at 2; WCA Comments at 6.

<sup>512</sup>OpTel Reply Comments at 2.

<sup>513</sup>*Id.*

<sup>514</sup>See, e.g., Liberty Comments at 13, 22 (preemption should extend to any statute that guarantees access to MDUs by franchised MVPDs, regardless of whether their service is offered alone or with telephony, and regardless of the number of wires used, including statutes that grant common carriers MDU access for telephony purposes to the extent that they are interpreted to guarantee such carriers access for the provision of video services); Multimedia Development Comments at 7; OpTel Reply Comments at 2; WCA Comments at 6 ("it will be virtually impossible for the Commission to promote a competitive marketplace for multichannel video services unless the Commission preempts all State mandatory access laws which discriminate in favor of franchised cable operators").



antennas ("TVROs") and state regulation of SMATV systems.<sup>515</sup> ICTA advocates federal preemption of state mandatory access laws, arguing that the Commission has independent preemption authority to act, even in the absence of congressional direction, as long as its action is neither arbitrary nor exceeds its statutory authority.<sup>516</sup> Such preemption would not be arbitrary if it represents a reasonable accommodation of conflicting policies that are within the Commission's statutory authority.<sup>517</sup> According to ICTA, state mandatory access laws unfairly advantage the franchised cable operator, discourage competition, provide no benefit to the public, and conflict with the Commission's mandate to promote the growth of competition in the cable industry. ICTA asserts that preemption of such state laws would therefore be a reasonable accommodation of conflicting policies.<sup>518</sup>

186. Telephone providers also urge the Commission to preempt state mandatory access laws that confer exclusive or preferential rights on incumbent service providers.<sup>519</sup> These commenters argue that the Commission has the authority under Section 253 of the 1996 Act to preempt state or local legal requirements that have the effect of prohibiting carriers from providing telecommunications services, and that the Commission should therefore exercise its preemption authority under Section 253(b) to nullify the offending portions of the state mandatory access laws.<sup>520</sup> AT&T argues that existing state laws granting access are not uniform and are often unclear, and that, to the extent competitive service providers are

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<sup>515</sup>See, e.g., Liberty Comments at 19-20 and n. 28, (citing 47 C.F.R. § 25.104 as preempting local zoning regulations that discriminate between satellite receive-only antennas and other types of receiving antennas; and *In re Earth Satellite Communications, Inc.*, 95 F.C.C.2d 1223 (1983) *aff'd sub nom. New York State Commission on Cable Television v. FCC*, 749 F.2d 804 (2d Cir. 1984) ("ESCOM") as preempting state regulation of SMATV systems that results in the suppression of that service in order to advance interests of franchised cable operators); WCA Comments at 8-9, and n.19 (citing *In re Orth-O-Vision, Inc.*, 82 F.C.C.2d 178 (1980), *aff'd sub nom. New York State Commission on Cable Television v. FCC*, 669 F.2d 58 (2d Cir. 1982) ("Orth-O-Vision"), as upholding the Commission's preemption of a New York state law imposing franchise requirements on a MATV system was upheld where such regulation would have "[inhibited] the growth of MDS in the provision of freely competitive interstate services.").

<sup>516</sup>ICTA Comments at 53-55 (citing *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699 (1984)); see also Multimedia Development Comments at 5 and n. 4 (citing *Louisiana PSC v. FCC*, 476 U.S. 355 (1986); *National Assn. of Regulatory Utility Commissioners v. FCC*, 880 F.2d 422 (DC Cir. 1989); and *Orth-O-Vision* (providing that the Commission has authority to preempt state and local regulations which are inconsistent with and frustrate the execution of federal policy over interstate communications matter)). Furthermore, the Commission has Congressional authority to promote the nationwide development of wireless cable, and may preempt any state law that impedes the Commission's own regulatory scheme.

<sup>517</sup>ICTA Comments at 53-55 (citing *Crisp*, 467 U.S. 700).

<sup>518</sup>*Id.* at 55.

<sup>519</sup>See, e.g., AT&T Reply Comments at 8-9; MCI Reply Comments at 3; MFS Reply Comments at 2-6; NYNEX Comments at 17; RCN Reply Comments at 9.

<sup>520</sup>AT&T Comments at 9, n. 26.

prevented by state or local law from having the same access as incumbents, the Commission can preempt that state or local law.<sup>521</sup>

187. Most cable operators oppose the preemption of state cable mandatory access laws.<sup>522</sup> According to these parties, there is no basis in policy or law for the Commission to preempt statutes that guarantee subscribers access to franchised cable service. Marcus Cable, et al., argue that the Commission's prior preemption actions were undertaken to preempt laws that prohibited competitive services, not laws that guarantee subscribers a choice of video service providers.<sup>523</sup> Continental notes that state access laws are a response to landlords' access bottleneck, and that the preemption of existing access laws would only strengthen landlords' power to make both service and provider choices for tenants, by resurrecting the landlords' power to contract exclusively with service providers.<sup>524</sup> NCTA maintains that mandatory access laws are not discriminatory. Such laws do not exclude others from providing service, but merely ensure that consumers have access to multichannel video programming services.<sup>525</sup> NCTA further argues that there is no need for preemption of such laws because alternative providers may avail themselves of access statutes by becoming franchised, now that exclusive franchises are prohibited.<sup>526</sup> Time Warner claims that franchise service obligations, such as universal service requirements, sufficiently distinguish franchised operators so as to merit special treatment under state access laws.<sup>527</sup>

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<sup>521</sup>AT&T Reply Comments at 9, and n. 26. AT&T further contends that all service providers should be assessed building entry fees equally. *Id.*

<sup>522</sup>*See, e.g.*, Continental Reply Comments at 11; Marcus Cable, et al., Reply Comments at 11; NCTA Reply Comments at 13-14; Time Warner Reply Comments at 54.

<sup>523</sup>Marcus Cable, et al., Comments at 10-11 (in *Orth-O-Vision*, the Commission preempted a state law that prohibited competitive service by MMDS providers to MDUs. Similarly, if preemption is considered at all, only those regulations that might prohibit access to premises should be preempted, not state laws that provide access to subscribers).

<sup>524</sup>Continental Reply Comments at 11; *see also* Marcus Cable, et al., Reply Comments at 11 (preemption of state access laws would deprive MDU residents of a choice of providers and of the opportunity to receive all broadband services that cable operators are beginning to offer and would force MDU residents to accept whatever service building owners and landlords choose to provide).

<sup>525</sup>NCTA Reply Comments at 13-14. *But see* ICTA Comments at 51 (state mandatory access laws were not drafted to ensure MDU residents the right to receive cable service; they do not grant tenants the right to force a cable franchisee to condemn property to ensure tenants' receipt of cable service. A tenant request is typically a prerequisite to forced entry, but the cable franchisee is not obligated to honor the request, even if the tenant has no cable service available whatsoever).

<sup>526</sup>NCTA Reply Comments at 14; Time Warner Reply Comments at 54, 58 (non-franchised providers want the benefits of a franchise without the concurrent obligations; they argue for preemption simply because they seek access to the most lucrative buildings with minimal capital investment).

<sup>527</sup>Time Warner Reply Comments at 55.

b. Discussion

188. Many commenters argue that parity of access rights is necessary to foster a fully competitive market for multichannel video programming and telecommunications services. To achieve such parity, several alternative service providers urge the preemption of state mandatory access laws.<sup>528</sup> Franchised cable operator interests, however, oppose federal preemption of state mandatory access laws<sup>529</sup> and claim that parity of access should be achieved by granting franchised cable operators the same access to easements and rights-of-way as provided to telephone companies and other utilities.<sup>530</sup> They also contend that there are valid distinctions between franchised and non-franchised video service providers, which justify disparate treatment under state access laws.<sup>531</sup>

189. We believe that the record in this proceeding does not support the preemption of state mandatory access laws at this time. While commenters opposing state mandatory access laws argue that these laws act as a barrier to entry, the record also indicates that property owners deny access for reasons unrelated to the state laws, including property damage, aesthetic considerations and space limitations. We believe that our rules regarding the building-by-building and unit-by-unit disposition of home run wiring adopted herein will lower many of these barriers to entry and may alleviate some of the advantages incumbent providers may have with respect to providing service to particular buildings.

190. We remain concerned, however, about disparate regulation of MVPDs that unfairly skews competition in the multichannel video programming marketplace. Despite our decision not to preempt state and local mandatory access laws at this time, we encourage these jurisdictions to evaluate present laws and circumstances to determine whether a nondiscriminatory and competitively neutral environment exists. We believe that establishing competitive parity under these statutes will promote competition among MVPDs and will expand consumer choice.

3. **Exclusive Service Contracts**

a. Background

191. In discussing provider access to MDUs, many commenters raise the issue of exclusive service contracts between MDU owners and video service providers. Telephony providers generally argue for rules banning cable operators from entering into exclusive contracts for the provision of video service to MDUs and prohibiting cable operators from enforcing the exclusivity provisions of any existing

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<sup>528</sup>AT&T Reply Comments at 8-9; ICTA Comments at 53, 55; Liberty Cable Comments at 13; MCI Reply Comments at 3; Multimedia Development Comments at 7; MFS Comments at 4; MFS Reply Comments at 5-6; NYNEX Comments at 17; RCN Reply Comments at 9; WCA Comments at 8.

<sup>529</sup>Continental Reply Comments at 11; Marcus Cable, et al., Reply Comments at 10; NCTA Reply Comments at 13-14; Time Warner Reply Comments at 54.

<sup>530</sup>See, e.g., Charter/Comcast Comments at 11; TKR Cable Comments at 12.

<sup>531</sup>Time Warner Reply Comments at 55-58. Time Warner contends, for example, that Section 621(a)(3) of the Communications Act requires franchised service providers to provide universal service upon request, while non-franchised video providers have no such obligations. *Id.* at 56.

contract.<sup>532</sup> Bell Atlantic argues that prohibiting exclusive contracts would be consistent with the Commission's restrictions on exclusive contracts in other contexts where necessary to increase competition and enhance consumer choice,<sup>533</sup> and that the Commission has directly prohibited exclusive contracts between regulated providers and unregulated parties in the past.<sup>534</sup> AT&T argues that long-term, exclusive service contracts with MDUs are an impermissible barrier to entry and should be preempted under Section 253(d) of the 1996 Act. AT&T further argues that state and local laws which allow for discriminatory application of charges imposed on franchised service providers should also be preempted.<sup>535</sup>

192. Some cable operators also support a ban on exclusive contracts. Cox argues that the Commission should preempt state laws that permit exclusive contracts if they interfere with federal policies, claiming that the policy which led Congress to prohibit exclusive franchises supports a limitation on exclusive contracts for provision of service in MDUs.<sup>536</sup> Continental contends that competition will be impossible where control over access to potential customers is wielded by landlords that decide to contract exclusively with a particular provider, and argues that proposals that empower landlords to make such choices must be rejected in favor of proposals that empower tenants to make those choices themselves.<sup>537</sup>

193. Some alternative video providers, private cable interests and property owners argue that exclusive contracts are imperative for viable competition and oppose the prohibition of exclusive contracts,

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<sup>532</sup>See, e.g., Bell Atlantic Comments at 5; MCI Reply Comments at 3; NYNEX Comments at 17; Ameritech *ex parte* submission, dated May 15, 1997; GTE Comments at 22 (existing cable operators should be barred from entering into or enforcing any exclusive arrangements in excess of 12 months in markets where alternative providers have announced an intention to enter).

<sup>533</sup>Bell Atlantic Reply Comments at 7 (citing *Report and Order* in MM Docket Nos. 92-259, 90-4 and 92-295 (Implementation of the Cable Television Consumer Protection Act of 1992: Broadcast Signal Carriage Issues), 8 FCC Rcd 2965 (1993), and *First Report and Order* in MM Docket No. 92-265 (Implementation of the Cable Television Consumer Protection Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage), 8 FCC Rcd 3359 (1993)).

<sup>534</sup>*Id.* at 8 (citing 47 C.F.R. §§ 73.635 and 73.239). Bell Atlantic also contends that, in contrast to mandatory access requirements, a prohibition on exclusive contracts would eliminate unreasonable barriers to competition without unduly interfering with the interests of MDU owners and managers, who would still retain discretion to grant or deny access to service providers. *Id.* at 5-6.

<sup>535</sup>AT&T Reply Comment at 9-10, n. 27. *But see* SBC Reply Comments at 6-7 (Commission should not dictate rules regarding exclusive contracts; question of exclusivity in this context is a matter of private contract, and parties should be allowed the freedom to exercise their own choice).

<sup>536</sup>Cox Comments at 27-28 (citing 47 U.S.C. § 152(a) and *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968)). Cox claims that in some respects, owners resemble local franchising authorities who typically refused to grant more than one cable franchise prior to the Cable Acts of 1984 and 1992; those authorities justified exclusive franchises by asserting an interest in preventing undue disruption to streets, and extracted concessions and payments in return for franchise, just as property owners do in this context. *Id.* at 27 and n. 40.

<sup>537</sup>Continental Comments at 21-22; *see also* Continental Reply Comments at 10 (the Commission's preeminent policy goal should be to promote facilities-based competition, not minimize inconvenience to owners or maximize landlords' ability to enter lucrative exclusive contracts).

claiming that: (1) such contracts are private agreements beyond the scope of the Commission's preemption authority under Section 253;<sup>538</sup> (2) it would be cost-prohibitive for new entrants to install facilities in MDUs without service exclusivity;<sup>539</sup> (3) exclusivity is often necessary to attract investment, given the smaller subscriber base and the provider's need to guarantee a return on its investment;<sup>540</sup> and (4) prohibiting exclusive contracts will never promote unlimited competition in MDUs, since such competition is physically impossible.<sup>541</sup>

194. GTE contends that the Commission does not have jurisdiction to prohibit these exclusive contracts or to limit their duration, because the Commission has no authority over MDU owners and the rates of cable operators facing "effective competition" under Section 623 of the 1992 Cable Act.<sup>542</sup> GTE argues that any use of Section 628(b) of the Communications Act is improper as it does not expand the Commission's jurisdiction to reach these exclusive contracts, since such action would go beyond the Congressional purpose of ensuring video service providers' access to video programming.<sup>543</sup> Such regulation, GTE argues, would contravene the 1996 Act's purpose to promote competition.<sup>544</sup> Similarly, Section 4(i), authorizing the Commission to perform all acts necessary in the execution of its functions, provides no jurisdiction to regulate these contracts since such regulation is directly inconsistent with the Commission's authority.<sup>545</sup>

195. While alternative video providers and private cable interests generally argue that exclusive contracts are imperative for viable competition to exist, they argue that "perpetual" exclusive contracts are anti-competitive. These commenters define "perpetual" exclusive contracts as exclusive service contracts

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<sup>538</sup>Building Owners, et al., Reply Comments at 7; *see also* Further Comments of Building Owners, et al., at 6-7; Further Comments of Community Associations Institute at 17 (urging the Commission not to interfere with an MDU owner's ability to consider exclusive contracts because such options are a right of property ownership).

<sup>539</sup>OpTel Comments at 7-8; OpTel Reply Comments at 2; OpTel/MTS *ex parte* submission, dated July 23, 1996, at 2; Wireless Holdings Reply Comments at 2; GTE *ex parte* submission, dated May 15, 1997, at 1-2; ICTA *ex parte* submission, dated February 24, 1997, at 3-4; ICTA *ex parte* submission, dated February 27, 1997.

<sup>540</sup>ICTA Comments at 45. *But see* Cox Reply Comments at 14-15 (arguments that limited duration exclusive contracts are necessary is unpersuasive; exclusivity not necessary to attract and justify investment, and it is folly to suggest that viable facilities-based competition cannot exist in MDUs. Exclusivity allows building owners to choose a monopoly provider rather than allowing subscribers to choose among providers; incentives to enter exclusive contracts serve only the interests of owners and do not promote competition).

<sup>541</sup>WCA Reply Comments at 22-23.

<sup>542</sup>GTE *ex parte* submission, dated March 31, 1997, at 1-10.

<sup>543</sup>*Id.* at 11-13.

<sup>544</sup>*Id.* at 13-14.

<sup>545</sup>*Id.* at 19-21.

which extend for the life of the provider's franchise and any extensions or renewals thereof.<sup>546</sup> ICTA argues that such contracts are perpetual because it is exceedingly rare that a franchise is not renewed, and that the practical result is that an owner's choice of provider is restricted forever. ICTA further contends that these contracts cannot be justified as a business necessity because they extend well beyond the period necessary for a cable operator to recoup its investment.<sup>547</sup>

196. OpTel recommends a rule requiring future contracts to include a specific term of years, and requiring existing perpetual contracts to expire at the end of the service provider's current franchise term.<sup>548</sup> Similarly, ICTA proposes that all future service agreements between franchised operators and property owners include a durational provision, and that existing perpetual agreements should be void 15 years after the effective date of the contract or upon expiration of the initial franchise term, whichever is sooner. For contracts that would be already void under this standard, ICTA proposes that the Commission allow a six-month period in which franchised operators may phase out service or negotiate new contracts for a term of years if the owner so desires.<sup>549</sup>

197. NCTA proposes a rule to be applied solely in mandatory access states, providing that exclusive contracts ordinarily shall not extend past the end of a current franchise term (or, in the case of a noncable video service provider, until the end of the cable franchisee's term) or a date certain in the contract. NCTA emphasizes, however, that the Commission must enforce this rule in a manner that protects operators' "legitimate business expectations" and operators near the end of their franchise terms.<sup>550</sup> ICTA, WCA, OpTel and MTS argue that there is no reason for the rule to be limited to states where franchised cable operators have mandatory access to all MDUs.<sup>551</sup> Moreover, ICTA opposes linking the duration of exclusive contracts to the current franchise term.<sup>552</sup> ICTA further argues that the proviso for protection of operators' business interests and operators near the end of their franchise term would spawn never-ending litigation and deprive the market of any certainty regarding the termination of these contracts, thus further hobbling competition.<sup>553</sup>

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<sup>546</sup>ICTA Comments at 55; OpTel Comments at 8; WCA ex parte submission, dated October 2, 1996, at 2-3; ICTA/OpTel/MTS/WCA ex parte submission, dated March 27, 1997, at 1; GTE ex parte submission, dated March 31, 1997, at 15; PacTel/PacBell ex parte submission, dated February 10, 1997, at 9; *see also* Further Comments of Skyzone at 2.

<sup>547</sup>ICTA Comments at 56.

<sup>548</sup>OpTel Comments at 8.

<sup>549</sup>ICTA Comments at 57.

<sup>550</sup>NCTA ex parte submission, dated February 13, 1997, at 1.

<sup>551</sup>ICTA/OpTel/MTS/WCA ex parte submission, dated March 27, 1997, at 1; ICTA ex parte submission, dated February 24, 1997, at 3.

<sup>552</sup>ICTA ex parte submission, dated February 24, 1997, at 4.

<sup>553</sup>*Id.*

198. SBC and PacTel advocate a rule that exclusive contracts be allowed only where a service provider has newly installed at least 75% of the inside wiring in an MDU and that the contract term be limited to seven years from the time of new installation.<sup>554</sup> GTE argues that any rule limiting exclusive contracts to new installations must consider the service providers' total investment and not just inside wiring.<sup>555</sup> Furthermore, GTE, ICTA, and WCA oppose any absolute limitation on the duration of exclusive contracts.<sup>556</sup> GTE argues that limitation of the period that a SMATV operator has to recover on its investment would force the operator to raise its price to subscribers, thereby making it less able to compete with an entrenched cable operator.<sup>557</sup> Finally, GTE contends that the Commission has no authority to prohibit exclusive contracts or to limit their duration.<sup>558</sup>

199. In addition to a brief reference in PacTel's Reply Comments,<sup>559</sup> several commenters also have submitted *ex parte* presentations suggesting that a "fresh look" policy be applied to certain exclusive contracts executed prior to the effective date of our rules.<sup>560</sup> For example, OpTel/MTS has suggested applying a "fresh look" to "perpetual" exclusive contracts between property owners and cable operators.<sup>561</sup> Under the OpTel/MTS proposal, property owners that have committed to long-term perpetual exclusive contracts would have a window of 180 days to take a "fresh look" at the marketplace to renegotiate or terminate those contracts without liability in order to avail themselves of a competitive alternative service provider. The "fresh look" period would be initiated at any given MDU upon the request of a private cable operator able to serve the MDU or where the Commission has determined that the cable operator is subject to effective competition. If a property owner wished to enter into another perpetual contract

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<sup>554</sup>SBC/PacTel/PacBell *ex parte* submission, dated April 28, 1997, at 1. PacTel/PacBell originally supported a 3-5 year limitation on the exclusive contract term but later advocated a 7 year limitation in their joint proposal with the SBC. PacTel/PacBell *ex parte* submission, dated February 10, 1997, at 9. PacTel/PacBell define "inside wire" to include feeder cable and other components on the network or provider side of the demarcation point and the homerun or drop wiring to individual units. *Id.*

<sup>555</sup>GTE *ex parte* submission, dated May 15, 1997, at 2 (SMATV operators often also have to invest in an on-premise headend and campus wiring and electronics to transport signals to the various buildings in an MDU complex).

<sup>556</sup>*Id.*; ICTA *ex parte* submission, dated February 24, 1997, at 4-5; WCA Comments at 13-15; WCA Reply Comments at 22; *see also* OpTel Comments at 9 (no further regulation of exclusive contracts is necessary after "fresh look" doctrine has been adopted).

<sup>557</sup>GTE *ex parte* submission, dated May 15, 1997, at 2.

<sup>558</sup>*Id.*

<sup>559</sup>PacTel Reply Comments at 6 (at the time new rules are promulgated, Commission should allow property owners benefit of a "fresh look" at existing contracts; otherwise, incumbents will evade new rules by locking MDU owners into long term contracts before rules are promulgated).

<sup>560</sup>*See, e.g.*, OpTel/MTS *ex parte* submission, dated July 23, 1996; WCA *ex parte* submission, dated October 2, 1996; SBC Communications, Inc. *ex parte* submission, dated October 18, 1996, at 5; GTE *ex parte* submission, dated November 5, 1996, at 8-9; ICTA *ex parte* submission, dated February 24, 1997, at 4-5; WCA/ICTA/OpTel/MTS *ex parte* submission, dated March 27, 1997, at 1; *see also* Further Reply of CEMA at 10-13.

<sup>561</sup>OpTel/MTS *ex parte* submission, at 5.

after being given the opportunity for a "fresh look," it would not be prohibited. The Commission would not dictate an acceptable term length for exclusive contracts.<sup>562</sup> OpTel/MTS argues that the Commission's responsibility to regulate cable rates under Title VI is comparable to its regulation responsibilities under Title II, and that therefore analogies to "fresh look" proceedings under Title II are appropriate.<sup>563</sup> OpTel/MTS further claims a "fresh look" application will also fulfill our obligations to small businesses under Section 257 of the 1996 Act.<sup>564</sup>

200. Similarly, WCA supports the application of a "fresh look" policy to exclusive contracts entered into prior to the emergence of competition.<sup>565</sup> While generally supporting the OpTel/MTS proposal, WCA proposes that the "fresh look" period only apply upon a finding by the Commission that the cable operator is subject to effective competition. The "fresh look" period would be available to a franchised cable operator and an MDU owner that had entered into an exclusive arrangement that extended either for the life of the operator's franchise and any renewals thereof, or for three years or longer.<sup>566</sup> WCA contends that the "fresh look" period should remain open until 180 days after a determination of effective competition to assure MDU owners a reasonable opportunity to consider competitive alternatives and pinpoint precisely when the "fresh look" window expires.<sup>567</sup> SBC agrees with this calculation of the "fresh look" period.<sup>568</sup>

201. GTE likewise supports a "fresh look" policy toward existing exclusive contracts which, GTE argues, were imposed by cable operators not subject to "effective competition." GTE argues that the Commission has jurisdiction to adopt this policy under Section 623 of the Communications Act, which authorizes the Commission to choose the best method to ensure "reasonable rates" for cable service, and requires that any such regulations "achieve the goal of protecting subscribers" where "effective competition" is not present.<sup>569</sup>

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<sup>562</sup>*Id.* at 6.

<sup>563</sup>*Id.*

<sup>564</sup>*Id.* at 7.

<sup>565</sup>WCA ex parte submission, dated October 2, 1996, at 1.

<sup>566</sup>*Id.* at 3. WCA argues that applying "fresh look" to contracts lasting three years or more comports with our decision in *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd. 7369, 7463-64 (1992), *aff'd* 8 FCC Rcd. 7341, 7345 (1993) (existence of certain contracts with access arrangement of three or more years raised potential anti-competitive concerns). *Id.*

<sup>567</sup>*Id.* at 4. Where a cable operator has been held to face effective competition prior to adoption of the "fresh look" policy, the 180 day window should be calculated from the date the Commission adopts the fresh look policy. *Id.*

<sup>568</sup>SBC ex parte submission, dated October 18, 1996.

<sup>569</sup>GTE ex parte submission, dated March 31, 1997, at 14-15; GTE ex parte submission, dated November 15, 1996, at 8-9.



202. NCTA and Jones, however, argue that the "fresh look" policy is inappropriate and the Commission has no authority to adopt it in this situation. The "fresh look" policy applies only where an area previously subject to monopoly opens to competition or where an area is subject to significant changed circumstances. NCTA and Jones argue that these conditions do not exist in the video services market because SMATV systems have competed vigorously with cable services since the 1980s.<sup>570</sup>

b. Discussion

203. We recognize the significant competitive issues raised by commenters regarding exclusive contracts. We are concerned that long-term exclusive contracts may raise anti-competitive concerns because they "lock up" properties, preventing consumers from receiving the benefits of a newly competitive market.<sup>571</sup> However, we also note that alternative providers cite the competitive benefits of exclusive contracts as a means of financing "specialized investments." Without exclusive contracts to allow recovery over time on the cost of new installation, these parties assert that they will be unable to compete with the incumbent cable operator.<sup>572</sup> We believe that the record would benefit from further comment on these issues. In the *Second Further Notice* below, we seek comment on various options, including: (1) adopting a maximum "cap" on the enforceability of all MVPDs' exclusive contracts; (2) limiting the ability of MVPDs with market power from entering into exclusive contracts; and (3) adopting a "fresh look" period for so-called "perpetual" exclusive contracts.

G. Customer Access to Cable Home Wiring Before Termination of Service

1. Background

204. In the *Inside Wiring Notice*, we noted that Section 624(i) required us to prescribe rules concerning the disposition, upon termination of service by a subscriber, of cable home wiring installed by a cable operator.<sup>573</sup> We also noted that our current rules do not require cable operators to allow subscribers to install their own wiring or to rearrange operator-owned wiring.<sup>574</sup> In contrast, telephone inside wiring has been deregulated for nearly ten years, and we tentatively concluded that there was no reason to change the telephone inside wiring rules.<sup>575</sup> We asked for comment as to whether consumers should have the right to install and own their broadband inside wiring and to access wiring on their

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<sup>570</sup>NCTA Reply Comments at 20-21; Jones ex parte submission, dated January 8, 1997, at 1, 4 (broad Title II powers that supported "fresh look" policy in the context of common carriers are inapplicable to video service providers).

<sup>571</sup>See, e.g., Bell Atlantic Reply Comments at 4.

<sup>572</sup>OpTel Comments at 7-8; OpTel Reply Comments at 2; OpTel/MTS ex parte submission, dated July 23, 1996, at 2; WHI Reply Comments at 2; GTE ex parte submission, dated March 31, 1997; GTE ex parte submission, dated May 15, 1997, at 1-2; ICTA Comments at 45; ICTA ex parte submission, dated February 24, 1997, at 3-4; ICTA ex parte submission, dated February 27, 1997.

<sup>573</sup>*Inside Wiring Notice*, 11 FCC Rcd at 2765.

<sup>574</sup>*Id.*

<sup>575</sup>*Id.* at 2766.